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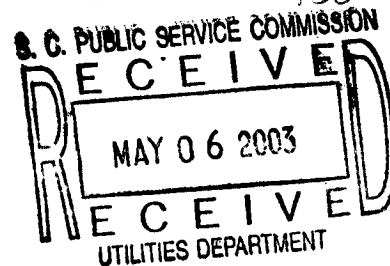
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Founding Member

May 2, 2003



HAND DELIVERED

The Honorable Gary E. Walsh
South Carolina Public Service Commission
Synergy Business Park, Saluda Building
101 Executive Center Drive
Columbia, SC 29210

Re: SECCA - Universal Service Fund 2002
Docket No. 97-239-C
Our File No. 19339-0010

Dear Mr. Walsh:

Enclosed is the Petition for Rehearing or Reconsideration of AT&T, SECCA, South Carolina Cable Television Association and MCI of Order No. 2003-215 in the above matter. Please file stamp the extra copies provided and return them with our courier. By copy of this letter we are serving a copy of the Petition on all parties of record.

Please call if there are any questions.

Very truly yours,

ROBINSON, McFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/jmp

Enclosure

cc/enc: All parties of record

ACCEPTED
2003-5-5-03

POSTED
2003/5/03

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NO. 97-239-C

SC PUBLIC SERVICE
COMMISSION

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In Re:) **PETITION FOR REHEARING**
) **OR RECONSIDERATION**
Proceeding to Establish) **OF AT&T, SECCA, SOUTH**
Guidelines for a) **CAROLINA CABLE**
Universal Service Fund) **TELEVISION ASSOCIATION**
) **AND MCI OF**
) **ORDER NO. 2003-215**

Come now AT&T Communications of the Southern States, LLC ("AT&T"), Southeaster Competitive Carriers Associations ("SECCA"), South Carolina Cable Television Association, and MCImetro Access Transmission Services, LLC, MCI WorldCom Communications, Inc., and MCI WorldCom Network Services, Inc. (collectively referred to as "MCI,")¹ and respectfully submit their Petition for Reconsideration to the South Carolina Public Service Commission ("Commission") of its Order No. 2003-215, issued April 15, 2003.

1. AT&T, SECCA, South Carolina Cable Association and MCI ("Petitioners") intervened as formal parties of record in this docket.

2. In Order No. 2003-215 the Commission approved an increase of approximately \$6.6 million in the amount of the South Carolina Universal Service Fund ("USF"). This increase was requested by six (6) incumbent local exchange carriers ("ILECs") – the petitioning Independent Telephone Companies ("ITCs").

¹ In proceedings in this docket since 1998 these certificated carriers and their predecessors in interest have referred to themselves collectively as "WorldCom." On April 14, 2003 WorldCom, Inc., the parent corporation of these carriers, announced that its brand name would be henceforth identified as "MCI."

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UTILITIES DEPARTMENT

DATE: 06/06/03

3. On April 22, 2003 Petitioners received a copy of Order No. 2003-215.

4. As permitted by S.C. Code §58-9-1200 and the Commission's Rules of Practice and Procedure, S.C. Code Regs. 103-836, 103-842 and 103-881, Petitioners respectfully petition the Commission for reconsideration of the following described findings and conclusions. Each such finding or conclusion cited constitutes error and arbitrary and capricious action, and is clearly erroneous in view of the reliable, probative and substantive evidence on the whole record, in violation of Chapters 5 and 9 of Title 58, and Chapter 23 of Title 1 of the Code of Laws of South Carolina, and is an abuse of discretion. In addition, each error violates the Due Process and Equal Protection Clauses of the Fourteenth and Fifth Amendments to the Constitution of the United States, and violates S.C. Const. Arts. I §3 and IX, §1.

5. In Order No. 2003-215 the Commission found that the amount of funding requested by the petitioning ITCs in this proceeding, when combined with the funding they have received as a result of prior proceedings in this docket, does not exceed one-third (1/3) of the USF for each company. Consequently, the Commission found that the petitioning ITCs are not required to update the results of their cost studies for basic local exchange service, and approved the petitioning ITCs' requests. ¶¶ 6, 7 and 13, at pp. 17, 21; also, ordering ¶¶ 1, 2, at pp. 21-22. The Commission, however, has not determined the size of the USF pursuant to §58-9-280(E)(4), in this proceeding or any prior proceeding. Moreover, the Commission has not determined the amount applicable to any company based on any such determination pursuant to §58-9-280(E)(4). Therefore, the Commission has violated S.C. Code §58-9-280(E)(4).

6. As an alternative to determining the size of the USF, the Commission may use estimates to establish the size of the USF on an annual basis. S.C. Code §58-9-280(E)(4). The Commission has not used any such estimates. Even assuming that the Commission has used such estimates, the Commission has not established a mechanism pursuant to §58-9-280(E)(4) for adjusting any inaccuracies in the estimates. Instead, the Commission in Order No. 2003-215, while stating that it is “within [its] purview” to examine the ILECs’ annual earnings, eschews any action to adjust “projected amounts,” and concludes that “implementing a procedure to track the accuracy of projected revenue losses is unnecessary,” in violation of §58-9-280(E)(4). ¶ 9 at pp. 18-19.

7. The intraLATA toll, extended area service and similar expanded area calling plans of the petitioning ITCs whose rates are being reduced by the Commission in this proceeding, and for which the Commission is permitting the petitioning ITCs to recover from the USF, are interexchange services or combinations of local exchange and interexchange services. ¶¶ 10, 13, at pp. 19-21. See T. 33, 55, 90, 208, 254, 257-59. The services thus receiving USF subsidies are not basic local exchange services. Basic local exchange service is the only service expressly supported by the USF. S.C. Code §58-9-280(C)(5)&(E). There is no evidence of the extent to which the rates to be reduced by the petitioning ITCs are providing implicit subsidies to basic local exchange services, or the effect on such subsidies of the proposed reductions in rates. Consequently, S.C. Code §58-9-280(C)(5)&(E) has been violated.

8. The petitioning ITCs have not provided, and the Commission has not adduced, evidence as to how the cost estimates of the services under analysis relate to the cost of providing any other service offered by the carrier. T. 86, 153, 187, 199-200. The

earnings and financial conditions of these companies and the effects of the proposed rate changes on other services are admittedly relevant, but remain unknown. T. 153, 165, 169-76, 182, 187-90. This is tantamount to improper, single-issue ratemaking. Nor should the Commission assume that the cost of basic local exchange service equals the historical booked cost. Some of these costs date from 1996, an “eternity” ago in the telecommunications industry. T. 256-57. Further, just because a cost is embedded it does not necessarily follow that it is appropriate or reasonable for cost recovery. Cost not associated with providing service – e.g., due to inefficiencies and costs not prudently incurred - exists in the historical booked cost. T. 183, 239-40. Costs that were incurred due to imprudent business decisions do not provide any service and do not contribute to the “costs of providing basic local exchange services”. S.C. Code §58-9-280(E)(4). If the costs that have not been prudently incurred were eliminated, there may be no need for universal service support.

9. The Commission rejects any analysis of stimulation of demand, on the grounds that a) “(w)hile there is a possibility demand would increase with a decrease in price, there is also a possibility that demand would decrease, depending on the nature of the calling plan and what other providers in the area are offering,” ¶ 8 at p.18, and b) any stimulation in demand would likely be accompanied by an increase in expenses to meet the demand. ¶ 8 at p.18. These conclusions are based on patently incredible ITC testimony that mocks the laws of economics and is contrary to common sense. Demand would not decrease for a product whose price was decreased, unless that product is a luxury item whose value is a result of its high price. Telephone service is no such commodity, as the relevant markets daily demonstrate. Moreover, not all the costs of

providing telephone service are traffic-sensitive. Stimulation in demand may well increase traffic-sensitive costs, but it will not affect those costs of the network that are not traffic-sensitive. Thus stimulation in demand will logically result, overall, in decreased per unit costs. Indeed, the petitioning ITCs acknowledge to the Commission that demand could well change, T. 62, 100, 113, while conceding that reducing rates would have the effect of increasing revenues. T. 36. At the same time, the ITCs also refuse to accede to any audit that would evaluate whether the projected decreases in revenues from rate reductions in fact have occurred. T. 37-39, 94-97, 111, 114, 116-17, 153, 224. Thus the Commission has relied on the ITCs' statements about the economic effects of rate decreases in violation of §58-9-280(E). See T. 111-15, 191, 218, 221, 223-25.

10. The Commission concludes that the petitioning ITCs are in the "best position to determine what market pressures exist and which services are more critical than others to reduce." ¶ 10, at pp. 19-20. Consequently, ILECs are to choose which services receive rate reductions, and, therefore, which services will not receive rate reductions. At the same time, they are also to choose which services and to what extent such services should be replaced with USF assistance. Conversely, and notwithstanding the elimination of implicit subsidy implied by the calculation required by §58-9-280(E)(4), ILECs are also to choose to what extent such services should continue to provide implicit support for "universal service." See T. 19, 25-26, 80, 85; T. 182-83, 187, 190, 200. Indeed, the petitioning ITCs do not provide and the Commission does not conduct an analysis of the amount of implicit subsidy that exists in the rates to be reduced. Instead, the Commission assumes that their rates are set above cost, and that the margin by which those rates exceed costs subsidizes basic local exchange service. ¶ 5, at

p. 17. See T. 42, 216-24, 227-29, 240. As a result, it is the ILECs, not the Commission, that are allowed to regulate how much and where competitive entry will occur in their markets. See T. 185, 215, 231-32, 233-34, 236. Thus the Commission has violated the Due Process Clause of the Fourteenth and Fifth Amendments to the United States Constitution, SC. Const. Arts. I, §3 and IX, §1, and has unlawfully delegated power to regulate, in violation of S.C. Code §§58-3-140 and 58-9-280(E)(4).

11. Order No. 2003-215 violates the requirements of S.C. Code §58-9-280(E)(4) because the order does not establish the size of the USF. Section 58-9-280(E)(4) requests that “the size of the USF shall be determined by the Commission . . .” Section 58-9-280(E)(4) also requires the Commission to establish the size of the fund by calculating the difference between the “costs of providing basic local exchange services and the maximum amount it may charge for the services.” Order number 2003-215 does not engage in the calculation required by the statute and does not establish the size of the fund but rather allows the incumbent local exchange carriers, as carriers of last resort, to establish the size of the fund as they see fit by making rate reductions. By the plain language of the statute the General Assembly required this Commission to determine how large the USF would be. In Order No. 2003-215 the Commission has abdicated this responsibility.

12. The USF established in Order No. 2003-215 is a barrier to entry prohibited by §253 of the Federal Telecommunications Act of 1996 as well as S.C. Code §58-9-280(E) which requires that the state USF “must not be inconsistent with applicable federal law.” The USF contemplated by Order No. 2003-215 is a barrier to entry because it permits incumbent local exchange carriers to protect themselves from competition by

lowering rates for services as to which they face competition and recovering projections of lost revenues from the USF.

13. Order No. 2003-215 furthers the creation of a potentially massive intrastate USF which will serve as a barrier to entry and will stifle competition in violation of federal and state law. The fund is oversized because the Commission's approach in calculating the USF mismatches costs and revenues in violation of S.C. Code §58-9-280(E). The Commission's formula uses all costs associated with the facilities used by local exchange companies to provide telecommunications services while the formula only uses revenues received from the provision of basic local residential and business services. This mismatching of costs and revenues creates a fund which will be so large that it will serve as a barrier to entry by potential competitors and will otherwise inhibit competition in contravention of the South Carolina Telecommunications Act and the Federal Telecommunications Act.

14. Order No. 2003-215 conflicts with federal law in contravention of the Federal Telecommunications Act of 1996 in its continuation of the Commission's policy of assessing contributions to the state USF on interstate revenues. Interstate revenues are subject to a federal surcharge to support the federal universal service fund. The South Carolina intrastate USF impermissibly burdens federal universal service support mechanisms in violation of 47 U.S.C. §254(f) by imposing an additional state surcharge on those same interstate revenues.

15. The USF described in Order No. 2003-215 is discriminatory in the manner in which companies that qualify as carriers of last resort may be allowed to receive funds from the USF. Order No. 2003-215 permits withdrawal of funds from the USF only upon

showing that a local exchange company has reduced rates to remove implicit subsidies. Although the term “implicit subsidy” is not defined in §58-9-280 or in any of the Commission’s orders it can only apply to incumbent local exchange companies. Competitive local exchange carriers do not have rates which contain implicit subsidies and cannot therefore make the showing required under the terms of Order No. 2003-215 to receive funds from the USF. This feature of the USF violates 47 U.S.C. §254(f) which provides that state universal service plans must operate in an equitable and non-discriminatory basis. A plan which requires all carriers to contribute but only permits certain carriers to take from the fund is inequitable and discriminatory.

16. In Order No. 2003-215 the Commission reaffirmed its findings and conclusions from prior orders concerning the USF. ¶¶ 7-11, at pp. 17-20. These findings and conclusions fail to properly allocate the costs associated with outside plant to all service, in violation of S.C. Code Ann. §58-9-280(E) and 47 U.S.C. §254(k), and the FCC Separations requirements at 47 C.F.R. Part 36. See T. 188, 217-18, 221.

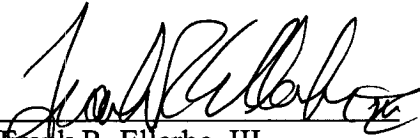
WHEREFORE, these Petitioners ask that the Commission reconsider its decision in Order No. 2003-215 and enter an order consistent with this petition.

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BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 97-239-C

IN RE:)	
)	
Proceeding to Establish)	
Guidelines for an intrastate)	CERTIFICATE OF SERVICE
Universal Service Fund)	
_____)	

This is to certify that I, Jami M. Paquette, a Legal Assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Petition for Rehearing or Reconsideration of AT&T, SECCA, South Carolina Cable Television Association and MCI of Order No. 2003-215** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

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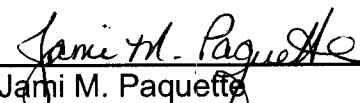
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Dated at Columbia, South Carolina this 2nd day of May, 2003.



Jami M. Paquette